

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In Re *Ex Parte* Application of HYBE CO., LTD., BELIFT LAB INC., and SOURCE MUSIC CO., LTD

Case No. 24-mc-80228-DMR

ORDER ON EX PARTE APPLICATION FOR ISSUANCE OF AN ORDER UNDER 28 U.S.C. § 1782

Re: Dkt. No. 1

Applicants HYBE Co., Ltd. (“Hybe”), BELIFT LAB Inc. (“Belift”), and SOURCE MUSIC Co., Ltd. (“Source Music”) (collectively “Applicants”) filed an ex parte application seeking permission to issue a subpoena pursuant to 28 U.S.C. § 1782 to obtain discovery for use in foreign proceedings. [Docket No. 1.] This matter is suitable for resolution without a hearing. Civ. L.R. 7-1(b). Having considered the papers and the relevant legal authority, the court grants the application.

I. BACKGROUND

Hybe is a multinational entertainment corporation with its principal place of business in Seoul, South Korea. [Docket No. 1-10 (Wook Ki Lee Decl., Sept. 9, 2024) ¶ 2. Belift and Source Music are subsidiaries of Hybe. *Id.* at ¶ 4. Applicants manage and train K-pop singers, as well as operate a record label, talent agency, music production company, event and concert management company, and music-publishing house. *Id.* at ¶ 3. Applicants use social media to cultivate audiences for the artists and performers they represent. *Id.* at ¶ 4.

Applicants assert that the YouTube channels “Cute Rabbit Jjang,” “EnterPick,” “People Box,” “Da Issue,” “NewJeansFam,” “Issue Tan,” and “Wangjam Issue” (collectively the “YouTube Channels”) published videos which made or propagated false and damaging statements against Applicants. *Id.* at ¶ 5. For example, the YouTube Channels claimed that ILLIT, a female

1 K-pop group managed by Belift, plagiarized its content from other artists, and that LE
2 SSERAFIM, another female K-pop group managed by Source Music, masked its members'
3 singing abilities from the general public. *Id.* On August 30, 2024, Applicants filed eight separate
4 civil complaints against the anonymous individuals operating the YouTube Channels in Seoul
5 Western District Court (the "Korean Proceedings"). [Docket No. 1-1 (Jong-Uk Park Decl., Sept.
6 9, 2024) ¶ 2.] Jong-Uk Park, an attorney representing Applicants in the Korean Proceedings,
7 states that Applicants have a "good faith basis" to believe that their complaints set forth "valid
8 legal claims for defamation, among other civil torts cognizable under South Korean law." *Id.* at ¶
9 3. Despite reasonable efforts, Applicants have been unable to determine the identities of the
10 individuals operating the YouTube Channels. *Id.* at ¶ 4.

11 Applicants now seek leave to issue a subpoena to non-party Google LLC ("Google") for
12 documents and information related to identifying the individual(s) who created, used, and/or
13 otherwise logged in to each of the YouTube Channels. [Docket No. 1, Ex. A (Proposed
14 Subpoena).] Google filed a statement of non-opposition, reserving its right to challenge the
15 subpoena after it is served. [Docket No. 11.]

16 II. LEGAL STANDARD

17 Applicants seek discovery pursuant to 28 U.S.C. § 1782, which states as follows:

18 The district court of the district in which a person resides or is found
19 may order him to give his testimony or statement or to produce a
20 document or other thing for use in a proceeding in a foreign or
21 international tribunal, including criminal investigations conducted
22 before formal accusation. The order may be made . . . upon the
23 application of any interested person and may direct that the testimony
or statement be given, or the document or other thing be produced,
before a person appointed by the court . . . To the extent that the
order does not prescribe otherwise, the testimony or statement shall
be taken, and the document or other thing produced, in accordance
with the Federal Rules of Civil Procedure.

24 28 U.S.C. § 1782(a). The purpose of section 1782 is "to provide federal-court assistance in the
25 gathering of evidence for use in a foreign tribunal." *Intel Corp. v. Advanced Micro Devices, Inc.*,
26 542 U.S. 241, 247 (2004); *see also Schmitz v. Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 84
27 (2d Cir. 2004) (noting that section 1782 has the "twin aims" of "providing efficient means of
28 assistance to participants in international litigation in our federal courts and encouraging foreign

1 countries by example to provide similar means of assistance to our courts” (citation and quotations
2 omitted)).

3 A district court is authorized to grant a section 1782 application where (1) the person from
4 whom the discovery is sought resides or is found in the district of the district court to which the
5 application is made, (2) the discovery is for use in a proceeding before a “foreign or international
6 tribunal,” and (3) the application is made by the foreign or international tribunal or “any interested
7 person.” 28 U.S.C. § 1782(a); *see also Intel*, 542 U.S. at 246-47; *In re Republic of Ecuador*, No.
8 C-10-80255-CRB (EMC), 2010 WL 3702427, *2 (N.D. Cal. Sept. 15, 2010).

9 “However, simply because a court has the authority under § 1782 to grant an application
10 does not mean that it is required to do so.” *In re Republic of Ecuador*, 2010 WL 3702427, at *2
11 (citing *Intel*, 542 U.S. at 264). The Supreme Court has identified several discretionary factors that
12 a court should take into consideration in ruling on a Section 1782 request: (1) whether the “person
13 from whom discovery is sought is a participant in the foreign proceeding”; (2) “the nature of the
14 foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the
15 foreign government or the court or agency abroad to U.S. federal court judicial assistance”; (3)
16 whether the request “conceals an attempt to circumvent foreign proof-gathering restrictions or
17 other policies of a foreign country or the United States”; and (4) whether the request is “unduly
18 intrusive or burdensome.” *Intel*, 542 U.S. at 264-65.

19 III. DISCUSSION

20 A. Authority to Issue Subpoena

21 The court has reviewed Applicants’ application and determines that the statutory
22 requirements of section 1782 have been satisfied. First, Applicants have established that Google
23 has its principal office in Mountain View, California, which is in this district. Park Decl. ¶ 4.
24 Second, the discovery is for use in the Korean Proceedings, which are proceedings before a
25 foreign tribunal. Third, Applicants qualify as “interested persons” because there is “[n]o doubt
26 that litigants are included among, and may be the most common example of, the ‘interested
27 person[s]’ who may invoke § 1782.” *Intel*, 542 U.S. at 256. Applicants are plaintiffs in the
28 Korean Proceedings, so they are litigants and clearly “interested persons” within the meaning of

1 section 1782.

2 **B. Discretionary Factors**

3 Having concluded that it has the authority to issue the subpoenas, the court turns to the
4 question of whether the four discretionary factors identified by the Supreme Court weigh in favor
5 of or against issuance of the subpoena.

6 With respect to the first discretionary factor, the Supreme Court has noted that “when the
7 person from whom discovery is sought is a participant in the foreign proceeding . . . , the need for
8 § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a
9 nonparticipant in the matter arising abroad. A foreign tribunal has jurisdiction over those
10 appearing before it and can itself order them to produce evidence. In contrast, nonparticipants in
11 the foreign proceeding may be outside the foreign tribunal’s jurisdictional reach; hence, their
12 evidence, available in the United States, may be unobtainable absent § 1782(a) aid.” *Intel*, 542
13 U.S. at 264 (internal quotations and citations omitted). Here, Google is not a party to the Korean
14 Proceedings, and Korean courts do not have jurisdiction to order discovery from Google. Park
15 Decl. ¶ 4. This factor weighs in favor of the court granting leave to issue the subpoena.

16 The second factor examines the nature and receptivity of the foreign tribunal. Park states
17 that the South Korean courts “would receive as evidence the information sought by Applicants,”
18 and that Park is “not aware of any directive by South Korean courts that would preclude the use of
19 the requested materials.” *Id.* at ¶ 6. This factor weighs in favor of Applicants.

20 With respect to the third factor, there is nothing to suggest that Applicants are attempting
21 to circumvent foreign proof-gathering restrictions. According to Park, “[i]f Google were subject
22 to the jurisdiction of Korean courts, this information could be obtained through discovery in the
23 Korean Proceedings themselves.” *Id.* at ¶ 4. This factor also weighs in favor of granting the
24 application.

25 The fourth factor examines whether the requested discovery is “unduly intrusive or
26 burdensome.” *Intel*, 542 U.S. at 265. “Requests are unduly intrusive and burdensome where they
27 are not narrowly tailored, request confidential information and appear to be a broad ‘fishing
28 expedition’ for irrelevant information.” *In re Ex Parte Application of Qualcomm Inc.*, 162 F.

1 Supp. 3d 1029, 1043 (N.D. Cal. 2016). Here, the proposed subpoena requests documents to
2 identify the individuals who operated the Google and/or YouTube accounts associated with the
3 YouTube Channels (“Google Accounts”). Proposed Subpoena. There are two categories of
4 information requested: 1) Google account IDs, Google account created dates, names, dates of
5 birth, genders, phone numbers, email addresses, and addresses of the persons who created, used, or
6 otherwise logged in to each of the Google Accounts; and 2) the names, dates of birth, genders,
7 phone numbers, and addresses of the persons associated with credit cards, bank accounts, and
8 other electronic commerce details registered with each of the Google Accounts. *Id.* The request
9 does not seek the actual credit card numbers, bank account numbers, or the electronic commerce
10 account numbers or passwords, and it does not seek any financial transaction information.
11 Applicants also seek “Access Logs,” which are the dates and times (or timestamps), Internet
12 Protocol (IP) addresses, activity types, port numbers, and any other related information that is kept
13 by Google when users or accountholders login or upload videos to their Google Accounts. *Id.* To
14 the extent that Access Logs are provided to identify the user(s) of each of the Google Accounts,
15 Applicants seek at least the last ten Access Logs and the time zone(s) associated with the
16 timestamps in those Access Logs. *Id.* This discovery is appropriately tailored to documents and
17 information identifying the individual(s) responsible for the allegedly defamatory videos
18 published by the YouTube Channels.

19 These findings do not preclude Google or the affected individual(s) (i.e., the individual(s)
20 who operated the YouTube Channels) from contesting the subpoena. The Ninth Circuit has held
21 that applications for subpoenas pursuant to section 1782 may be filed ex parte because “[t]he
22 witnesses can . . . raise[] objections and exercise[] their due process rights by motions to quash
23 the subpoenas.” *In re Letters Rogatory from Tokyo Dist.*, 539 F.2d 1216, 1219 (9th Cir. 1976).
24 Given the nature of the information sought by the subpoena, the court also finds that the subpoena
25 should contain a mechanism by which Google and the affected individual(s) may contest the
26 disclosure of their personal identifying information pursuant to the subpoena. Accordingly,
27 Google shall serve a copy of the subpoena and a copy of this order on each individual associated
28 with the YouTube Channels within 30 days of the date of service on Google. Google may serve

1 any such individual(s) using any reasonable means, including written notice sent to their last
2 known address, transmitted either by first-class mail or via overnight service.

3 Google and each individual associated with the YouTube Channels shall have 30 calendar
4 days from the date of service upon them to file any motions in this court to contest the subpoena.
5 If the 30-day period lapses without an individual contesting the subpoena, Google shall have 10
6 days to produce to Applicants the information responsive to the subpoena with respect to that
7 individual.

8 **IV. CONCLUSION**

9 For the foregoing reasons, the court grants the application. Applicants may serve a
10 finalized version of the subpoena attached to its application. Google and the individual(s)
11 associated with the YouTube Channels shall be permitted to contest the subpoena in accordance
12 with the procedure set forth above. Applicants must serve a copy of this order on Google at the
13 same time as the subpoena.

14

15

16 **IT IS SO ORDERED.**

17 Dated: November 27, 2024

18 
19 Donna M. Ryu
20 Chief Magistrate Judge

21
22
23
24
25
26
27
28